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99-5153

NO. 98-5664

ORIGINAL

Supreme Court, U.S.
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1999
OFFICE OF THE CLERK

IN THE UNITED STATES SUPREME COURT

OCTOBER 1998 TERM

UNITED STATES OF AMERICA,

Respondent

V.

CORNELL JOHNSON,

Petitioner

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RITA LaLUMIA
Assistant Federal Community Defender
FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.
707 Georgia Avenue, Suite 203
Chattanooga, Tennessee 37402
(423) 756-4349

Counsel for Petitioner

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Counsel for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Sixth Circuit erred in concluding that the district court properly imposed a "tail" of supervised release following incarceration after revoking Petitioner's initial term of supervised release, in violation of the Ex Post Facto Clause of the United States Constitution.

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OPINIONS BELOW

1. Opinion, United States Court of Appeals for the Sixth Circuit, United States of America v. Cornell Johnson, C.A. No. 98-5664 (6th Cir., April 29, 1999) (not recommended for full text publication).

2. Judgment in a Criminal Case, United States District Court for the Eastern District of Tennessee at Chattanooga, United States of America v. Cornell Johnson, District Court No. 1:93-cr-00138, May 1, 1998.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Sixth Circuit entered its opinion in this case on April 29, 1999. This Court's jurisdiction is invoked under Title 28, United States Code, Section 1254(1). Rule 13 of the Supreme Court allows for ninety days within which to file a petition for a writ of certiorari after entry of judgment by the appellate court. Accordingly, this petition is timely filed.

Petitioner, Cornell Johnson, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit. In that opinion, the Sixth Circuit affirmed the sentence of Petitioner.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article 1, Section 9, Clause 3 (the Ex Post Facto Clause): "No Bill of Attainder or ex post facto Law shall be passed."

Chapter 18, United States Code, Section 3583(h): "When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release."

STATEMENT OF THE CASE AND FACTS

Petitioner Cornell Johnson was originally convicted on February 28, 1994, for a Class D felony, and was sentenced to 25 months in prison followed by a three-year term of supervised release.

On April 30, 1998, Petitioner appeared in federal court to answer various allegations that he had violated his supervised release conditions by committing another crime and leaving the jurisdiction without permission. Petitioner admitted these violations, and his supervised release was revoked. The applicable policy guidelines were 18 to 24 months, and the district court sentenced Petitioner to 18 months in prison to be followed by 12 months of supervised release. Petitioner argued that the reimposition of supervised release violates the Ex Post Facto Clause of the United States Constitution. The district court denied the Petitioner's motion.

REASONS FOR GRANTING OF THE WRIT

The United States Court of Appeals for the Sixth Circuit erred in concluding that the district court properly imposed a "tail" of supervised release following incarceration after revoking Petitioner's initial term of supervised release, in violation of the Ex Post Facto Clause of the United States Constitution.

On September 13, 1994 Congress amended 18 U.S.C. § 3583 to allow district courts to reimpose a term of supervised release after revoking the original term of supervision and requiring a term of imprisonment. 18 U.S.C. § 3583(h). Prior to that amendment, district courts generally did not have the authority to reimpose supervision after ordering imprisonment from a supervised release revocation hearing. Thus, when Petitioner committed his crime in 1993, which resulted in a term of imprisonment as well as a term of supervised release, he was not subject to the reimposition of supervision if his supervised release term were to be revoked. *United States v. Truss*, 4 F.3d 437, 438-39 (6th Cir. 1993).

Because § 3583(h) allows the imposition of an additional term of supervision following a term of incarceration, Petitioner contends that § 3583(h) violates ex post facto prohibitions by subjecting him to a greater punishment for his original crime than was available at the time he committed the crime.

The Ex Post Facto Clause states: "No Bill of Attainder or ex post facto Law shall be passed." U.S. Const. art. I, § 9, cl. 3. An early decision relating to the Ex Post Facto Clause was rendered by the United States Supreme Court in *Calder v. Bull*, 3 Dall. 386, 1 L.Ed 648 (1798). In *Calder*, the Supreme Court set down four pronouncements concerning the Ex Post Facto Clause, including a statement that the Ex Post Facto Clause is violated by "[e]very law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed." *Id.* at 390. More recently, a two-prong test has been applied to determine whether the application of a law violates the Ex Post Facto Clause. First, the law must apply to events before its enactment and, second, the law must disadvantage the offender affected by it. *Miller v. Florida*, 482 U.S. 423, 430, 107 S.Ct. 2446, 2451 (1987).

Looking at the second element first, it is clear that § 3583(h) works at a disadvantage to this Petitioner. *United States v. Lominac*, 144 F.3d 308, 315 (4th Cir. 1998). When a defendant has his supervised release revoked, he receive no credit for "time previously served on post release supervision." See 18 U.S.C. §3583(e)(3). Now, after application of subsection (h) a defendant can serve multiple terms of supervised release and lose multiple periods of "street time" after the initial revocation. *United States v. Beals*, 87 F.3d 854, 857 (7th Cir. 1996); overruled by *United States v. Withers*, 128 F.3d 1167 (7th Cir. 1997). Applying common sense, the Rules of Criminal Procedure, and the reasoning of a decision such as that in *Lominac,* it is clear that further time

on supervised release is not favorable to a defendant. Fed R.Crim.P. 32.1(b) ("an extension of the term of probation or supervised release is not favorable to the person for the purposes of this rule"); *Lominac*, 144 F.3d at 315 (Under § 3583(h), in addition to the court's ability to sentence a defendant to a term of imprisonment, the court may impose a new term of supervised release that constitutes a potential punishment greater than that under § 3583(e) alone.)

After determining that subsection (h) works to a defendant's disadvantage, the question becomes whether or not the defendant's new punishment "should be considered the continuing legal consequence of the defendant's original crimes, or viewed instead as the independent legal consequence of a defendant's later misconduct." *United States v. Reese*, 71 F.3d 582, 584 (6th Cir.), *cert. denied* 116 S.Ct. 2529 (1995). The Petitioner's reinstatement on supervised release is a consequence of the original crime, not the consequence of his later misconduct.

This is so because there may be misconduct which triggers a violation of supervised release that is not "illegal." For example, a defendant can violate supervised release conditions for failing to work, failing to fill out a monthly report or, as here, leaving the judicial district without prior approval. These actions, although not criminal can, and in fact do, serve as the grounds for revocation of supervised release. The *Reese* panel focused on the fact that Defendant Reese "repeatedly tested positive for drugs" and would have suffered no ill effect had he been able to conform his conduct to legal

requirements. 71 F.3d at 590. Even where the revocation is based on allegations that the defendant has committed a crime while on supervised release, the additional punishment in the form of reimposition of supervised release following a term of incarceration constitutes additional penalties for the original crime which would not have been available at the time the original crime was committed.

At least four circuits have expressly decided that the retrospective application of § 3583(h) violates the Ex Post Facto Clause. *United States v. Lominac*, 144 F.3d 308 (4th Cir. 1998); *United States v. Dozier*, 119 F.3d 239 (3rd Cir. 1997); *United States v. Collins*, 118 F.3d 1394 (9th Cir. 1997); and *United States v. Meeks*, 25 F.3d 1117 (2nd Cir. 1994). In *Collins*, the Ninth Circuit found that the "district court here applied § 3583(h) to punish deeds of [the defendant's] that occurred before the section's enactment," even though the actions which constituted the violations occurred after § 3583(h) became effective. *Collins*, 118 F.3d at 1397. The Ninth Circuit also noted that "violation of a condition of supervised release is accordingly not a new substantive offense for purposes of the Ex Post Facto Clause," and that such violations are often not crimes at all, and "the punishment that follows such a violation is imposed on the authority of conviction for the underlying offense." *Id*.

Some circuits have also considered the ex post facto issue with respect to the mandatory prison requirement of § 3583(g). The Second, Fourth and

Ninth Circuits have found that § 3583(g) and its retrospective punishment violates the Ex Post Facto Clause inasmuch as the mandatory prison requirement is a "consequence of the offender's underlying crime [just] as is the initial term of imprisonment." *United States v. Meeks*, 25 F.3d 1117 (2nd Cir. 1994); *United States v. Paskow*, 11 F.3d 873, 876 (9th Cir. 1993); *United States v. Parriett*, 974 F.2d 523 526 (4th Cir. 1992).

Other circuits have examined § 3583(h) and found that its retrospective application does not violate the Ex Post Facto Clause. *United States v. St. John*, 92 F.3d 751, 766-67 (8th Cir. 1996); *United States v. Brady*, 88 F.3d 225, 228-229 (3rd Cir.), *cert. denied*, 117 S.Ct. 773 (1997); *United States v. Evans*, 87 F.3d 1009, 1010-11 (8th Cir. 1996). However, it must be noted that those circuits have given a qualified acceptance of §3583(h) and its retrospective application: the Third Circuit now differentiates between revocation from a Class A felony as was the case in *Brady*, or a Class B, C, or D felony as was the case in *Dozier*. See *Dozier*, 119 F.3d at 243-44. The Eighth Circuit has always allowed for reimposition of supervised release after revocation, even before the enactment of §3583(h), and accordingly there is no ex post facto concern for that circuit. *United States v. St. John*, 92 F.3d at 765; *United States v. Schrader*, 973 F.2d 623, 624-25 (8th Cir. 1992). The Tenth Circuit also approved the retrospective application of § 3583(h) in an unpublished opinion, *United States v. Wash*, 97 F.3d 1465 (10th Cir. 1996)

(relying in part on Tenth Circuit precedent allowing imposition of a new term of supervised release after revocation).

In summary, Petitioner submits that the two-prong test of *Miller v. Florida* is met: the district court has applied a law to events occurring before the law's enactment, and Petitioner was disadvantaged by the application of the law to him. *Miller*, 107 S.Ct. at 2451; *Reese*, 71 F.3d at 585.

CONCLUSION

The reimposition of supervised release after revocation of supervised release and incarceration in prison violates the Ex Post Facto Clause. Petitioner respectfully requests a writ of certiorari issue to the United States Court of Appeals for the Sixth Circuit to reverse its ruling to the contrary.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

By: Rita LaLumia
Rita LaLumia

The Flatiron Building
Suite 203
707 Georgia Avenue
Chattanooga, TN 37402
(423) 756-4349

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon the Solicitor General, Department of Justice, 10th Street and Constitution Avenue, Washington, D.C., 20530, and to Mr. Gary Humble, Assistant United States Attorney, 1110 Market Street, Chattanooga, Tennessee, 37402, by placing a true and exact copy of same in the United States Mail, with sufficient postage thereon to carry the same to its destination.

This the 29th day of June, 1999.

Rita LaLumia
Rita LaLumia

NO.98-5664

IN THE UNITED STATES SUPREME COURT

OCTOBER 1998 TERM

UNITED STATES OF AMERICA,

Respondent,

V.

CORNELL JOHNSON,

Petitioner.

APPENDIX

RITA LaLUMIA
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Counsel for Petitioner

No. 98-5664

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
APR 29 1999
LEONARD GREEN, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CORNELL JOHNSON,

Defendant-Appellant.

ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 206 limits citation to specific situations. Please see Rule 206 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

Before: MARTIN, Chief Judge; BOGGS and COLE, Circuit Judges.

Cornell Johnson, represented by counsel, appeals a district court judgment imposing a new term of supervised release, following the revocation of his original term of supervised release. The parties have expressly waived oral argument, and this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In 1994, Johnson pleaded guilty to conspiring to defraud, produce, use, and traffic in one or more counterfeit access devices, in violation of 18 U.S.C. § 1029(b)(2). The district court sentenced him to twenty-five months of imprisonment, plus three years of supervised release. While on supervised release, Johnson committed various state law offenses in Virginia, and he left the judicial district without permission. During a revocation hearing, Johnson admitted that he had violated the terms of his original supervised release, and the district court sentenced him to eighteen months of imprisonment, plus twelve months of supervised release. Johnson has filed a timely appeal, arguing that the new term of supervised release violates the Ex Post Facto Clause.

Upon review, we conclude that the district court properly sentenced Johnson. *See United States v. Lloyd*, 10 F.3d 1197, 1220 (6th Cir. 1993), *cert. denied*, 511 U.S. 1043 *and* 1146 *and* 513 U.S. 883 (1994). Johnson's sentence does not violate the Ex Post Facto Clause. In order for a statutory modification of punishment to run afoul of the Ex Post Facto Clause: 1) the statute must apply retroactively to past conduct; and 2) the statute must work to the prejudice or disadvantage of the defendant. *See Miller v. Florida*, 482 U.S. 423, 430 (1987). This court has rejected Johnson's argument, concluding that the application of § 3583(h) does not violate the Ex Post Facto Clause. *See United States v. Abbington*, 144 F.3d 1003, 1005 (6th Cir.), *cert. denied*, 119 S. Ct. 344 (1998); *United States v. Page*, 131 F.3d 1173, 1175 (6th Cir. 1997), *cert. denied*, 119 S. Ct. 77 (1998). Although several other circuits have concluded that the application of § 3583(h) does violate the Ex Post Facto Clause, *see United States v. Lominac*, 144 F.3d 308, 312-16 (4th Cir. 1998); *United States v. Dozier*, 119 F.3d 239, 242-44 (3d Cir. 1997); *United States v. Collins*, 118 F.3d 1394, 1397-99 (9th Cir. 1997); *United States v. Meeks*, 25 F.3d 1117, 1119 (2d Cir. 1994), these cases are not controlling authority in this circuit.

Accordingly, we affirm the district court's judgment.

ENTERED BY ORDER OF THE COURT

Clerk

Filed MAY - 1 1998
Entd. Order Bk. 73 Pg. 50
R. Murry Hawkins, Clerk

AO 245D (Rev. 8/96) Sheet 1 - Judgment in a Criminal Case for Revocations

United States District Court
Eastern District of Tennessee at Chattanooga

UNITED STATES OF AMERICA
v.
Cornell Johnson

JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

Case Number: **1:93CR00138-002**

Perry H. Piper
Defendant's Attorney

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) **#1 and general cond.** of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

Violation Number	Nature of Violation	Date Violation Occurred
1	**The defendant failed to comply with the condition that he not commit another federal, state, or local crime.**	03/03/1996
2	**The defendant failed to comply with the condition that he not leave the judicial district without the permission of the Court or probation officer.**	03/03/1996

ATTEST:
A true copy.
Certified this MAY - 1 1998
R. MURRY HAWKINS, CLERK
By: _____ Dep. Cler

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: **250-04-0337**
Defendant's Date of Birth: **05/09/1954**
Defendant's USM No.: **84669-071**
Defendant's Residence Address:
845 North Central Avenue #615

Hapeville **GA** **30354**

Defendant's Mailing Address:
845 North Central Avenue #615

Hapeville **GA** **30354**

04/30/1998
Date of Imposition of Judgment

Signature of Judicial Officer

R. ALLAN EDGAR
United States District Judge
Name & Title of Judicial Officer

may 1, 1998
Date

DEFENDANT: Cornell Johnson

CASE NUMBER: 1:93CR00138-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 18 month(s).

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ a.m./p.m. on _____.
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

DEFENDANT: Cornell Johnson

CASE NUMBER: 1:93CR00138-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 12 month(s).

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Page 4

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

BEST AVAILABLE COPY

DEFENDANT: **Cornell Johnson**

CASE NUMBER: **1:93CR00138-002**

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program of testing and treatment for drug and alcohol abuse as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

The defendant shall participate in a program of mental health treatment as directed by the probation officer.

The defendant shall pay any restitution that remains unpaid at the commencement of the term of supervision.

The defendant shall provide the probation officer with access to any requested financial information.

The defendant shall not incur any credit charges or open additional lines of credit without the approval of the probation officer.

DEFENDANT: **Cornell Johnson**

CASE NUMBER: **1:93CR00138-002**

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$	$	$ 3,286.96

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . $ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _____

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such a determination.

☒ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	* Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Western Union	**$3,000.00**	**$3,000.00**	
Food Lion, Incorporated	**$286.96**	**$286.96**	
Totals:	$ 3,286.96	$ 3,286.96	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: **Cornell Johnson**

CASE NUMBER: **1:93CR00138-002**

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ in full immediately; or

B ☐ $ _____ immediately, balance due (in accordance with C, D, or E); or

C ☐ not later than _____ ; or

D ☐ in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E ☐ in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of $ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

Payments shall be made to: U.S. DISTRICT COURT, 800 MARKET ST., SUITE 130, KNOXVILLE, TN 37902

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall forfeit the defer.dant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program are to be made as directed by the court, the probation officer, or the United States attorney.